74 (5) 4-18-2007

NO. 06-8273

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN DANFORTH,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA

SUPPLEMENTAL RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In *State v. Danforth*, 718 N.W.2d 451 (Minn. 2006), the Minnesota Supreme Court held that the new rule announced in *Crawford v. Washington*, 541 U.S. 296 (2004) could not be retroactively applied in a state collateral attack of a final conviction. *Danforth*, 718 N.W.2d at 461. The Minnesota Supreme Court observed that it was "compelled" to apply the federal retroactivity standard in *Teague v. Lane*, 489 U.S. 288 (1989) to resolve the retroactivity question. *Danforth*, 718 N.W.2d at 455-56.

Petitioner Stephen Danforth filed a Petition for a Writ of Certiorari challenging the judgment of the Minnesota Supreme Court. After the petition was filed, this Court ruled that, under *Teague*, the new confrontation rule announced *Crawford* could not be applied retroactively on collateral review. *Whorton v. Bockting*, ___U.S.___, 127 S. Ct. 1173, 1183-84 (2007).

By letter dated March 20, 2007, Respondent has been asked to file a supplemental response to the following question:

> Are state supreme courts required to use the standard announced in *Teague v. Lane*, 489 U.S. 288 (1989) to determine whether United States Supreme Court decisions apply retroactively to state-court criminal cases, or may a state court apply state-law or state-constitution-based retroactivity tests that afford application of Supreme Court decisions to a broader class of criminal defendants than the class defined by *Teague*?

REASONS FOR DENYING THE PETITION.

1. The Minnesota Supreme Court's resolution of the retroactivity question was consistent with this Court's precedents.

The Minnesota Supreme Court's resolution of the retroactivity question was consistent with this Court's precedents and should not be reviewed. The court correctly held that, when asked to determine the retroactive application of a new federal rule on collateral review, it must follow the principles of *Teague*.

This Court has repeatedly held that the retroactivity of a new federal rule is a federal question and is governed by federal law.

> The determination whether a constitutional decision of this Court is retroactive—that is, whether the decision applied to conduct or events that occurred before the date of the decision—is a matter of federal law. When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions. The retroactive applicability of a constitutional decision of this Court, however, is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied. In order to ensure the uniform application of decisions construing constitutional requirements and to prevent States from denying or curtailing federally protected rights, we have consistently required that state courts adhere to our retroactivity decisions.

American Trucking Associations, Inc. v. Smith, 496 U.S. 167, 177 (1990) (citations and quotations omitted).

> The Supremacy Clause, U.S. Const., Art. VI, cl. 2 does not allow federal retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law. Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law ... cannot extend to their interpretations of federal law.

Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 100 (1993); *see also Michigan v. Payne*, 412 U.S. 47, (1973) (reversing state court determination that new federal constitutional rule applied retroactively to a final conviction).

Teague is the federal standard for determining the retroactivity of a new federal constitutional rule on collateral review. Under *American Trucking*, *Harper*, and *Payne*, state courts must "adhere" to the *Teague* framework when determining whether a defendant is "entitled to have a new rule of federal constitutional criminal procedure applied retroactively to his or her case" on collateral review. *Danforth*, 718 N.W.2d at 456.

Petitioner's position is not only contrary to *American Trucking*, *Harper*, and *Payne* but is also inconsistent with this Court's interest in federal uniformity and accepted principles of judicial federalism. This Court has long recognized "the necessity of uniformity of decisions throughout the whole United States upon all subjects within the purview of the constitution." *Martin v. Hunter's Lessee*, 14 U.S. 304, 347-48 (1816). "The goal of national uniformity rests on a fundamental principle: that a single sovereign's law should be applied equally to all." Justice Sandra Day O'Connor, *Our Judicial Federalism*, 35 Case W. Res. L. Rev. 1, 4 (1985). Contrary to Petitioner's assertion, *Teague* is not limited to federal habeas cases. *Teague* was driven not just by concerns for comity and finality but also by this Court's desire that federal law be applied uniformly to similarly-situated defendants. As the *Teague* plurality observed, "the harm caused by the failure to treat similarly situated defendants alike cannot be exaggerated: such inequitable treatment hardly comports with the ideal of 'administration of justice with an even hand.'" *Teague*, 489 U.S. at 315 (quotation omitted). The goal of uniformity is defeated if defendants in states granting retroactivity can use a new federal rule to attack their convictions on collateral review while defendants in states that follow *Teague* (and federal defendants) do not enjoy this potential benefit. Defendants in "retroactive" states would be treated differently *with regard to federal law* than similarly-situated defendants in "non-retroactive" states. The need for federal uniformity does not turn on form. It is just as compelling in a state collateral attack as it is a federal habeas proceeding.[1]

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[1] In the past, this Court has applied federal retroactivity principles to federal issues raised in state collateral proceedings. *See, e.g., Johnson v. New Jersey*, 384 U.S. 719 (1966) (holding defendant was not entitled to retroactive application of *Miranda* rule in a collateral state court proceeding).

This Court is the ultimate authority on the meaning and application of federal constitutional law. *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940). In our federal system, the Supremacy Clause commands that this Court's precedents bind state courts on issues of federal law. *Sims v. Georgia*, 385 U.S. 538, 544 (1967); *see also Claflin v. Houseman*, 93 U.S. 130, 135-37 (1876) ("The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are."). At the same time, federal courts are bound by state court interpretations on questions of state law. *Johnson v. Fankell*, 520 U.S. 911, 916 (1997); *Felder v. Casey*, 487 U.S. 131, 151 (1988).

Under our federal system, a state "is free as a matter of its own law" to afford broader protections to its citizens "than those this Court holds to be necessary upon federal constitutional standards." *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *see also Johnson v. New Jersey*, 384 U.S. 719, 733 (1966) ("States are entirely free to *effectuate under their own law stricter standards* than those we have laid down and to *apply those standards* in a broader range of cases that is required by" federal law) (emphasis added). A state court cannot, however, grant broader federal constitutional rights to a defendant under state law. *Hass*, 420 U.S. at 719; *Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001).

Hass and *Sullivan* stand for the proposition that a state cannot use state law to expand the scope of a federal constitutional decision. This is precisely what Petitioner advocates. He seeks to use state law to enlarge the retroactive application of the new federal constitutional rule announced in *Crawford*.

Accepting Petitioner's argument would put federal courts in an untenable position. Consider this example: a state court chooses to apply *Crawford* retroactively in a state collateral proceeding to a final conviction. It determines that a particular statement is non-testimonial and, therefore, no confrontation violation has occurred. The defendant files a

petition for a writ of habeas corpus in federal district court or seeks direct review from this Court. The federal court has two alternatives. It can ignore *Teague* and review the state court's ruling. Or, the federal court can follow *Teague* and leave the state court judgment unreviewed. *See Horn v. Banks*, 536 U.S. 266, 271 (2002) (federal habeas court must apply *Teague* bar when asserted even if state court already applied new federal rule without considering retroactivity). The first alternative is problematic because it grants state courts power to attach conditions (*i.e.* abandonment of controlling federal law) on the exercise of necessary federal judicial power. *See Pennsylvania v. Williams*, 294 U.S. 176, 182 (1935) (jurisdiction of federal court not subject to diminution or control by state law). The second alternative is equally problematic because it renders the state court the final arbiter on a federal constitutional issue. *National Tea Co.*, 309 U.S. at 557 (holding it is this Court's responsibility to assure "that state courts will not be the final arbiters of important issues under the federal constitution.").

Requiring state courts to apply *Teague* to assess the retroactivity of newly announced federal rules on state collateral review comports with accepted principles of federalism. What federalism represents "is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44 (1971). While state courts must follow federal retroactivity standards on questions of federal law, states have complete freedom to grant broader retroactive application to rulings based on state law. If a state court finds a federal constitutional rule particularly compelling, it is free to adopt the ruling as a matter of state law and to apply the state decision retroactively without federal interference. *See Wainwright v.*

Stone, 414 U.S. 21, 23 (1973) (states can choose the degree of retroactivity they wish to accord new decisions based on state law); *Aikens v. California*, 406 U.S. 813, 814 (1972) (the retroactivity of a new state-based rule is not reviewable by federal courts).

Petitioner did not ask the Minnesota Supreme Court to adopt *Crawford* as a matter of state constitutional law. Had he done so, he could have asked the court to disregard *Teague* and fashion a broader or more favorable state retroactivity rule. Petitioner sought the retroactive benefit of a newly announced federal constitutional rule. The Minnesota Supreme Court was not free to apply *Crawford*'s federal holding to a broader range of cases than *Teague* and *Bockting* allow. The Minnesota Supreme Court properly followed this Court's precedents and its decision should not be reviewed or disturbed. Certiorari review would be more appropriate to correct a state court's misapplication of *American Trucking*, *Harper*, and *Payne*.

2. The split in authorities on the retroactivity question is not compelling. The vast majority of state courts follow *Teague* when deciding whether a new federal constitutional rule is retroactive on collateral review.

Petitioner claims that it is necessary for this Court to resolve the issue of whether state courts must use *Teague* to determine the retroactive application of new federal rules because there is a "large and intractable" split in state authorities on this issue. The conflict among state authorities is not as profound or dire as Petitioner contends.

While courts differ on the necessity of applying *Teague*, the vast majority of states have applied *Teague* in determining the retroactivity of a new federal constitutional decision on collateral review. *See Duncan v. State*, 925 So.2d 245 (Ala. Crim. App. 2005); *State v. Towery*, 64 P.3d 828 (Ariz. 2003); *In re Moore*, 34 Cal. Rptr.3d 605 (Cal. Ct. App. 2005); *Edwards v. People*, 129 P.3d 977 (Colo. 2006); *Duperry v. Solnit*, 803 A.2d 287 (Conn. 2002); *Bailey v. State*, 588 A.2d 1121 (Del. 1991); *Harris v. State*, 543 S.E.2d 716 (Ga.

2001); *State v. Gomes*, 113 P.3d 184 (Hawaii 2005); *Hoffman v. Arave*, 121 P.3d 958 (Id. 2005); *People v. Flowers*, 561 N.E.2d 674 (Ill. 1990); *Brewer v. State*, 444 N.W.2d 77 (Iowa 1989); *Drach v. Bruce*, 136 P.3d 390 (Kan. 2006); *Bowling v. Commonwealth*, 163 S.W.3d 361 (Ky. 2005); *Casella v. State*, 802 A.2d 404 (Me. 2002); *State v. Adams*, 912 A.2d 16 (Md. App. 2006); *Commonwealth v. Bray*, 553 N.E.2d 538 (Mass. 1990); *People v. Sexton*, 580 N.W.2d 404 (Mich. 1998); *Danforth*, 718 N.W.2d 451 (Minn. 2006); *Manning v. State*, 929 So.2d 885 (Miss. 2006); *State v. Egelhoff*, 900 P.2d 260 (Mont. 1995); *State v. Lotter*, 664 N.W.2d 892 (Neb. 2003); *State v. Tallard*, 816 A.2d 977 (N.H. 2003); *State v. Lark*, 567 A.2d 197 (N.J. 1989); *People v. Eastman*, 648 N.E.2d 459 (N.Y. App. 1995); *Burr v. Kulas*, 532 N.W.2d 388 (N.D. 1995); *Pickens v. State*, 74 P.3d 601 (Ok. Cr. App. 2003); *Page v. Palmateer*, 84 P.3d 133 (Or. 2004); *Commonwealth v. Hughes*, 865 A.2d 761 (Pa. 2004); *Pailin v. Vose*, 603 A.2d 738 (R.I. 1992); *Talley v. State*, 640 S.E.2d 878 (S.C. 2007); *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001); *Taylor v. State*, 10 S.W.3d 673 (Tex. Cr. App. 2000); *Mueller v. Murray*, 478 S.E.2d 542 (Va. 1996); *State v. Blake*, 478 S.E.2d 550 (W.Va. 1996); *State v. Lagundoye*, 674 N.W.2d 526 (Wis. 2004); *Hanesworth v. State*, 783 P.2d 173 (Wyo. 1989). Even among jurisdictions that do not believe they are "bound" by *Teague*, many courts have voluntarily adopted the federal standard. *See State v. Mohler*, 694 N.E.2d 1129 (Ind. 1998); *Taylor v. Whitley*, 606 So.2d 1292 (La. 1992); *Colwell v. State*, 59 P.3d 463 (Nev. 2002); *State v. Zuniga*, 444 S.E.2d 443 (N.C. 1994); *State v. Evans*, 114 P.3d 627 (Wash. 2005). Only a few jurisdictions have rejected *Teague* in favor of a state-based retroactivity standard. *See State v. Smart*, 146 P.3d 15 (Alaska App. 2006) *rev. granted* (Feb. 2007); *Johnson v. State*, 904 So.2d 400 (Fla. 2005); *State v. Whitfield*, 107 S.W.3d 253 (Mo. 2003); *State v. Forbes*, 119 P.3d 144 (N.M. 2005); *Cowell v. Leapley*, 458 N.W.2d 514 (S.D. 1990). Some of these decisions appear to have limited application or impact. *See Forbes*,

119 P.3d at 147 (limiting its ruling to the "unique facts and procedural posture" of the case); *Whitfield*, 107 S.W.3d at 269 (noting that its decision would impact "only five" potential cases on collateral review).

A split in authority is not necessarily a compelling reason to justify the grant of Supreme Court review on an issue. *See, e.g., Metheny v. Hamby*, 488 U.S. 913 (1988). Exercise of this Court's discretionary jurisdiction would be more appropriate to resolve a federal question with broader impact among the state courts.

3. A decision from this Court will not alter the result reached by the Minnesota Supreme Court in Petitioner's case.

Even if the Court were to conclude that state courts are not bound by *Teague* in determining the retroactivity of a new federal rule on collateral review, Petitioner would not be entitled to relief under Minnesota law. Minnesota courts have applied varying rules of retroactivity to new state law rulings on *direct* review. *See State v. Baird*, 654 N.W.2d 105 (Minn. 2002); *Baker v. State*, 590 N.W.2d 636 (Minn. 1999). Minnesota has followed *Teague*, however, in determining whether new state law rulings should be applied retroactively on *collateral* review. *See Stiles v. State*, 716 N.W.2d 327 (Minn. 2006) (holding new state rule on necessity of instructing jury on lesser-included offense not retroactive on state collateral review under *Teague*); *Erickson v. State*, 702 N.W.2d 892 (Minn. App. 2005) (holding new state rule on necessity of probation revocation findings not retroactive on state collateral review under *Teague)*. In other words, *Teague* has been used as Minnesota's retroactivity standard for cases on collateral review. A decision by this court will not change the result reached by the Minnesota Supreme Court or afford Petitioner any relief. As such, review of the Minnesota Supreme Court's decision is unwarranted.

CONCLUSION

For the foregoing reasons, Respondent, State of Minnesota, respectfully requests this Court to deny the Petition for a Writ of Certiorari.

DATED: April 18, 2007

Respectfully submitted,

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